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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,402	10/03/2003	Keith Alan Miesel	009.6001 (P-11290.00)	1006
29906	7590	12/22/2005	EXAMINER	
INGRASSIA FISHER & LORENZ, P.C. 7150 E. CAMELBACK, STE. 325 SCOTTSDALE, AZ 85251			ALTER, ALYSSA M	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 12/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/678,402	MIESEL ET AL.
	Examiner Alyssa M. Alter	Art Unit 3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 03 October 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-24 is/are pending in the application.
  - 4a) Of the above claim(s) 11-24 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 03 October 2003 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>10/3/03 &amp; 11/15/04. &amp; 4/25/05</u>	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-10, drawn to a modular apparatus with communication module, classified in class 607, subclass 60.
- II. Claims 11-16, drawn to a modular apparatus with a housing, classified in class 607, subclass 36.
- III. Claims 17-21, drawn to a method dispense therapy, classified in class 607, subclass 2.  
*to*  
*17-21/05*
- IV. Claims 22-24, drawn to a method for sensing and stimulating, classified in class 607, subclass 6.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require a hybrid circuit substrate, but can utilize a processor and separate analog to digital (A/D) converter. The subcombination has separate utility such as a percutaneous diagnostic device, with an external central control module and satellite module and an implantable lead.

Inventions III and IV are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination can dispense therapy, without the electrodes to sense analog signals. The subcombination has separate utility such as a sensing and stimulating device, since the electrodes sense analog signals in addition to dispensing therapy.

806.05(e)

Inventions III & IV and I & II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the apparatuses could be used in diagnostic without implementation of therapy.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Stephen Bauer on December 13, 2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-10. Affirmation of this election must be made by applicant in replying to this

Art Unit: 3762

Office action. Claims 11-24 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Stokes et al. (US 5,814,089). Stokes et al. discloses an implanted central control module with a power source, such as a battery, and transmitting capabilities in order to transmit power to a plurality of implanted remote devices. Figure 1 displays the central control module 25 and the plurality of remote devices 26-29. The examiner considers a remote device to be a satellite module. Also, the “remote devices may have a lead”(col. 3, lines 51-53) as also seen in figure 1 on the remote devices 26-28.

The remote device or satellite module is further depicted in figure 3A. The remote device has a receiver circuit 52, which the examiner considers to be the communication

module, a controller 60, which may be a microprocessor, and the amplifiers 62, which the examiner considers to be the sense amp.

Furthermore, the "controller 60 is used to control the activities of the remote device, which include delivering stimulus pulses through driver 61 and electrodes 64, and receiving sensed information picked up at electrodes 64 and amplified at 62"(). Since the electrodes 64 are used for both sensing and stimulation, there is inherently a switching module included in the remote device. Also, in order to store the data sensed by the electrode, there is inherently memory and an A/D converter to convert the analog signals sensed by the electrodes to a format compatible with the microprocessor.

As to claim 6, remote units 26-29 are configured to deliver therapy to a target location. For example, "unit 26 delivers pacing or cardioversion pulses to the right atrium; remote unit 27 delivers pacing or cardioversion pulses to the right ventricle; remote unit 28 delivers pacing or cardioversion pulses to the left atrium; and remote unit 29 delivers stimulus pulses to another location"(col. 3, lines 36-41).

As to claim 7, the controller 60 can be comprised of "a microprocessor or equivalent logic and associated memory"(col. 6, lines 2-5). Therefore, the examiner considers the equivalent logic to be the logic block and the associated memory to be the buffer.

As to claims 8-9, since the satellite module, or remote devices, and the control module are wirelessly connected they have no wire interconnections. Thus, the system is limited to zero wire connections, and as such, has less than two or four wire connections.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alyssa M. Alter whose telephone number is (571) 272-4939. The examiner can normally be reached on M-F 9am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Alyssa M. Alter*  
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Examiner  
Art Unit 3762  
*AM*